

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 06-10885-NMG
)	
JAMES TAMBONE and)	
ROBERT HUSSEY,)	
)	
Defendants.)	
_____)	

JAMES TAMBONE’S ANSWER TO PLAINTIFF’S COMPLAINT

Defendant James Tambone (“Tambone”) respectfully submits this Answer, including affirmative defenses, to the Plaintiff Securities and Exchange Commission’s (“SEC” or the “Commission”) Complaint.

SUMMARY

1. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

2. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

3. Tambone admits that he was Columbia Distributor’s Co-President. The averments in this paragraph that relate to the signed agreements require no response, as they are offered by the SEC in support of claims dismissed by the Court on December 28, 2006 and

subsequently waived by the SEC before the United States Court of Appeals for the First Circuit pursuant to S.E.C. v. Tambone, 597 F.3d 436, 451 (1st Cir. 2010) (en banc). Tambone denies the remaining averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

4. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

5. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

6. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

7. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

8. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

9. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

10. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

11. This paragraph purports to state legal propositions that are not averments of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

12. This paragraph purports to state legal propositions that are not averments of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

13. This paragraph purports to state legal propositions that are not averments of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

14a. This paragraph requires no response as this claim was dismissed by the Court on December 28, 2006 and affirmed by the First Circuit on March 10, 2010 pursuant to S.E.C. v. Tambone, 597 F.3d 436 (1st Cir. 2010) (en banc). To the extent a response is necessary, Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

14b. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments,

Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

14c. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

14d. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

14e. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

15. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

16. This paragraph contains no averments of fact. Alternatively, to the extent this paragraph is deemed to contain averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

JURISDICTION

17. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

18. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

19. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

DEFENDANTS

20. Tambone admits that he lives in Wellesley, Massachusetts and was Co-President of Liberty Funds Distributor, a predecessor of Columbia Distributor, and then Columbia Distributor. Tambone also admits that, during that time, he was a registered securities principal. Tambone denies the remaining averments in this paragraph.

21. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph, except Tambone admits that at times Hussey reported to him and the other Co-President, Louis Tasiopoulos.

RELATED ENTITIES

22. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

23. Tambone admits that he was Co-President of Liberty Distributor and became Co-President of Columbia Distributor and that at times Hussey reported to him and the other Co-President, Louis Tasiopoulos. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

24. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

FACTS

25. Tambone admits that he was Co-President of Liberty Distributor. Tambone denies the remaining averments in this paragraph.

26. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

27. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

28. This paragraph contains no averments of fact. Alternatively, to the extent this paragraph is deemed to contain averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph, except admits that “market timing” is not illegal.

29. This paragraph contains no averments of fact. Alternatively, to the extent this paragraph is deemed to contain averments, Tambone denies them as they pertain to him, and is

without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph, except admits that “market timing” is not illegal.

30. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

31. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

32. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

33. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

34. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

35. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

36. The averments in this paragraph require no response, as they are offered by the SEC in support of claims dismissed by the Court on December 28, 2006 and subsequently waived by the SEC before the United States Court of Appeals for the First Circuit pursuant to S.E.C. v. Tambone, 597 F.3d 436, 451 (1st Cir. 2010) (en banc). To the extent a response is necessary, Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

37. The averments in this paragraph require no response, as they are offered by the SEC in support of claims dismissed by the Court on December 28, 2006 and subsequently waived by the SEC before the United States Court of Appeals for the First Circuit pursuant to S.E.C. v. Tambone, 597 F.3d 436, 451 (1st Cir. 2010) (en banc). To the extent a response is necessary, Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

38. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

39. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

40. The averments in this paragraph that relate to the signed agreements require no response, as they are offered by the SEC in support of claims dismissed by the Court on December 28, 2006 and subsequently waived by the SEC before the United States Court of Appeals for the First Circuit pursuant to S.E.C. v. Tambone, 597 F.3d 436, 451 (1st Cir. 2010) (en banc). Tambone denies the remaining averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

41. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

42. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

43. Tambone denies the averments in this paragraph.

44. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

45. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

46. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves.

47. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

48. Tambone denies the averments in this paragraph as alleged as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

49. Tambone denies the averments in this paragraph as alleged and states that the document referenced in this paragraph speaks for itself.

50. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

51. Tambone denies the averments in this paragraph as they pertain to him and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge

or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

52. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

53. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

54. Tambone denies the averments in this paragraph as they pertain to him and states that the documents referenced in this paragraph speak for themselves. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

55. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

56. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

57. Tambone denies the averments in this paragraph as they pertain to him and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

58. Tambone denies the averments in this paragraph as they pertain to him and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

59. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

60. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

61. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

62. Tambone denies the averments in this paragraph as alleged and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

63. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

64. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

65. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

66. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

67. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

68. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

69. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

70. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

71. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

72. Tambone denies the averments in this paragraph as they pertain to him and states that the documents referenced in this paragraph speak for themselves. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

73. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

74. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

75. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

76. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

77. Tambone denies the averments in this paragraph, except admits that the head of the Newport Fund Group approved the arrangement.

78. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

79. Tambone denies the averments in this paragraph as alleged as they pertain to him, and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

80. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

81. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

82. Tambone denies the averments in this paragraph as alleged as they pertain to him, and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

83. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

84. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

85. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

86. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

87. Tambone denies the averments in this paragraph as alleged and states that the documents referenced in this paragraph speak for themselves. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

88. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

89. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

90. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

91. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

92. Tambone denies the averments in this paragraph as alleged and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

93. Tambone is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph.

94. Tambone denies the averments in this paragraph as alleged and states that the document referenced in this paragraph speaks for itself. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

95. Tambone denies the averments in this paragraph as alleged, including all subparts, and states that the documents referenced in this paragraph speak for themselves.

96. Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

97. Tambone denies the averments in the first sentence of this paragraph as they pertain to him. Tambone admits the averments in the second sentence of this paragraph. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

98. Tambone denies the averments in this paragraph as alleged as they pertain to him and further states that the documents referenced in this paragraph speak for themselves. Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

99. Tambone denies the averments in this paragraph.

100. Tambone denies the averments in this paragraph.

101. Tambone denies the averments in this paragraph.

FIRST CLAIM

102. Tambone repeats and realleges his responses to the averments in paragraphs 1 through 101 above.

103. This paragraph requires no response as this claim was dismissed by the Court on December 28, 2006 and affirmed by the First Circuit on March 10, 2010 pursuant to S.E.C. v. Tambone, 597 F.3d 436 (1st Cir. 2010) (en banc). To the extent a response is necessary, Tambone denies the averments in this paragraph as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

SECOND CLAIM

104. Tambone repeats and realleges his responses to the averments in paragraphs 1 to 101 above.

105. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

THIRD CLAIM

106. Tambone repeats and realleges his responses to the averments in paragraphs 1 through 101 above.

107. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

108. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

109. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

110. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

FOURTH CLAIM

111. Tambone repeats and realleges his responses to the averments in paragraphs 1 through 101 above.

112. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

113. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

114. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

115. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

116. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

FIFTH CLAIM

117. Tambone repeats and realleges his responses to the averments in paragraphs 1 through 101 above.

118. This paragraph purports to state a legal proposition and is not an averment of fact to which a response is necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

119. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

120. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

121. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

122. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

123. This paragraph purports to state a legal proposition that is not an averment of fact to which a response is not necessary. To the extent this paragraph does make any averments, Tambone denies them as they pertain to him, and is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in this paragraph.

AFFIRMATIVE DEFENSES

As further, separate, and affirmative defenses to the causes of action alleged in the Complaint, Tambone asserts as follows:

First Affirmative Defense

The Complaint fails to state any claim upon which relief may be granted.

Second Affirmative Defense

The SEC's claims fail to comply with the requirements of Rule 9(b) of the Federal Rules of Civil Procedure.

Third Affirmative Defense

Tambone did not acted with the requisite scienter, recklessness, or any improper intent.

Fourth Affirmative Defense

Tambone did not make material misstatements, he did not violate any duty of disclosure, and he did not omit to disclose any material facts.

Fifth Affirmative Defense

Tambone did not aid and abet any primary violation of the federal securities laws by Columbia Advisors or Columbia Distributor.

Sixth Affirmative Defense

Tambone did not know, and in the exercise of reasonable care, could not have known, of the alleged misstatements.

Seventh Affirmative Defense

The claims are barred in whole or in part by the doctrine of laches, and/or estoppel, and/or unclean hands and/or waiver.

Eighth Affirmative Defense

Tambone has not employed a deceptive or manipulative device in connection with the purchase or sale of any security.

Ninth Affirmative Defense

Injunctive relief is not appropriate as there is no likelihood of future violations and any equitable relief is barred by the doctrine of laches.

Tenth Affirmative Defense

Tambone did not mislead any investor, and he did not fail to disclose material information to any investor.

Eleventh Affirmative Defense

To the extent the SEC alleges any causes of action that accrued prior to May 19, 2001, they are barred by the Statute of Limitations.

Twelfth Affirmative Defense

Some of the alleged misrepresentations described in the Complaint are “forward looking statements” protected by 175, 17 C.F.R. § 230.175, promulgated pursuant to the Securities Act of 1933.

Thirteenth Affirmative Defense

The SEC may not prove its claims through allegations of collective scienter or collective knowledge.

Fourteenth Affirmative Defense

There is no “Strict Prohibition” as alleged in the Complaint.

Fifteenth Affirmative Defense

Tambone hereby incorporates by reference any and all other defenses asserted or to be asserted by Defendant Hussey to the extent applicable to Tambone and not inconsistent with any position set forth herein.

Sixteenth Affirmative Defense

Insofar as there has been no discovery as of yet in this proceeding, it is not yet possible to identify each and every Affirmative Defense that may be available. Accordingly, Tambone expressly reserve his right to amend this Answer to assert further Affirmative Defenses.

Tambone demands a jury on all claims and defenses so triable.

Respectfully submitted,

JAMES TAMBONE,

By his attorneys,

/s/ A. John Pappalardo

A. John Pappalardo (BBO# 388760)

Paula J. DeGiacomo (BBO# 118180)

Jennifer Martin Foster (BBO# 644796)

GREENBERG TRAURIG, LLP

One International Place, 20th Floor

Boston, MA 02110

(617) 310-6000

Dated: June 22, 2010

CERTIFICATE OF SERVICE

I, A. John Pappalardo, certify that on the 22nd of June, 2010, the foregoing Defendant James Tambone's Answer to Plaintiff's Complaint was filed electronically with the Court. Notice will be sent by e-mail to all parties through the Court's electronic filing system (and by mail to parties not registered with the system), and the filing may be accessed through the Court's system.

/s/ A. John Pappalardo

A. John Pappalardo